

**UNITED STATES DISTRICT COURT**

## **DISTRICT OF NEVADA**

ANTHONY K. ANDERSON,

Case No. 2:15-cv-00184-JAD-CWH

**Plaintiff**

V.

BRIAN WILLIAMS, et al.,

[ECF 32, 35, 38]

## Defendants

## **Order Denying Certificate of Appealability and Pending Motions**

## Defendants

On October 26, 2015, I granted respondents' motion to dismiss this habeas petition without prejudice because petitioner Anderson's state-court appeal was pending before the Nevada Supreme Court. ECF 29. On November 12, 2015, Anderson filed a notice of appeal to the Ninth Circuit. ECF 31. Anderson also filed a motion in this court for a full and complete copy of case. ECF 32. On November 23, 2015, the Ninth Circuit remanded this case for the limited purpose of granting or denying a certificate of appealability. ECF 38. On December 7, 2015, Anderson filed a motion in this court for reconsideration of the order granting the motion to dismiss. ECF 35. I now decline to issue a certificate of appealability, and I deny Anderson's pending motions.

## Discussion

**A. Anderson's Pending Motions are Denied Because this Court Lacks Jurisdiction to Consider Them.**

A notice of appeal divests this court of jurisdiction in the case. Accordingly, this court has no jurisdiction to consider Anderson's motion for reconsideration or motion for a copy of the case. Respondents served Anderson with a copy of the 81 exhibits attached to their motion to dismiss. Anderson appears to clarify in his reply in support of his motion that he seeks a copy of the petition filed in this case and a copy of his opposition to the motion to dismiss (ECF 36). I direct the Clerk of Court to send Anderson those copies.

## **B. A Certificate of Appealability is Not Merited.**

28 U.S.C. § 2253(c)(2) authorizes a court to issue a COA only when the petitioner “has made a substantial showing of the denial of a constitutional right.” When claims are rejected on their merits, a petitioner “must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)). For procedural rulings, a COA will issue only if reasonable jurists could debate (1) whether the petition states a valid claim of the denial of a constitutional right and (2) whether the court’s procedural ruling was correct. *Id.*

Having reviewed its determinations and rulings in adjudicating the motion to dismiss, I find that none of those rulings justifies a COA under the *Slack* standard, and I decline to issue a certificate of appealability.

## Conclusion

IT IS THEREFORE ORDERED that a certificate of appealability is DENIED.

IT IS FURTHER ORDERED that petitioner's motion for a copy of the case and motion for reconsideration [ECF 32 and 35] are DENIED for lack of jurisdiction. The Clerk of Court is directed to SEND to petitioner one copy of the petition [ECF 6] and one copy of petitioner's opposition to the motion to dismiss [ECF 22].

DATED: 17 December 2015.

  
Jennifer Dorsey  
United States District Judge